

Larry E. Craig, Chairman
Jade West, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

No. 56

March 18, 1998

S. 270 —Texas Low-Level Radioactive Waste Disposal Compact Consent Act

Calendar No. 30

Reported from the Committee on Judiciary on March 20, 1997, without amendment and without a written report.

NOTEWORTHY

- S. 270 could be considered any time during the weeks prior to the Senate's Easter recess.
- S. 270 would grant the consent of Congress to the Texas Low-Level Waste Disposal Compact. The Compact is an agreement among the States of Texas (the host state), Maine, and Vermont, and was entered into in fulfillment of the States' responsibility under the Low-Level Radioactive Waste Policy Act (P.L. 96-573, as amended) to develop facilities for the disposal of low-level radioactive waste generated within their borders.
- A similar bill, H.R. 629 [H.Rept. 105-181], passed the House on October 7, 1997, by a vote of 309-107. H.R. 629 is pending on the Senate Calendar (No. 197).
- Senator Wellstone is expected to attempt to offer an amendment to limit the storage of low-level radioactive waste at the Texas site to that produced in Texas, Vermont and Maine. The House approved a similar amendment offered by Rep. Doggett (D-TX) during House consideration of H.R. 629. Under current law, Congressionally-approved compacts have the right to control access to their disposal facilities, and so *may* restrict disposal facility access to only those States comprising the membership of the compact.
- The Governors of Vermont, Maine and Texas oppose any amendments to the compact because a revised compact will require the member states to go through a lengthy re-ratification process.

BACKGROUND

In 1980 Congress passed the Low-Level Radioactive Waste Policy Act to establish federal policy on nuclear waste disposal, the foundation of which is the notion that the States are responsible for the disposal of low-level radioactive waste generated within their borders (except for certain federal waste). The law's 1985 amendments clarified the right of Congressionally-approved compacts to control access to their disposal facilities. The Texas-Maine-Vermont compact was approved by those states' legislatures and governors (and in the case of Maine, by referendum as well). Presently, nine interstate compacts have been granted Congressional consent, comprising a total of 41 States.

State Responsibilities for Low-Level Waste Disposal

By law Congress maintains authority over the disposal of high-level nuclear waste and transuranic waste while states are responsible for low-level radioactive waste, which, unlike spent nuclear reactor fuel or high-level radioactive waste, emits a low level of radiation that decays fairly rapidly. Most low-level waste (97 percent) does not require special shielding for the protection of workers or the surrounding community. Low-level radioactive waste includes discarded protective clothing, medical waste produced by hospitals and materials produced by universities in the course of research.

States are authorized to enter into compacts to provide for the establishment and operation of regional disposal facilities. As requested by many states and the National Governors Association, compacts may restrict disposal facility access to only those states who are members of the compact. While the consent of Congress is not necessary for the formation of interstate agreements, the absence of Congressional consent raises questions regarding the rights of compact members to exclude waste from non-member States. The consent granted by Congress continues only as long as a compact complies with the provisions of the Low-Level Radioactive Waste Policy Act.

The desire to restrict access to disposal facilities was a driving force behind the adoption of the 1980 Act and the subsequent Low-Level Radioactive Waste Policy Amendments Act of 1985 (P.L. 99-240). Washington, Nevada, and South Carolina, which, at the time, hosted the nation's only three low-level radioactive waste disposal facilities, expressed their unwillingness to continue accepting all of the nation's low-level radioactive waste.

The law also established a series of penalty surcharges and denial of access for States which did not meet the legislation's milestones for progress toward the development of compact facilities. Lastly, the 1985 Act granted the three States with existing facilities the right to impose escalating surcharges on waste, and to cap the volume of waste they would accept as an incentive to other states to pursue the development of disposal sites.

S. 270

The Texas Low-Level Radioactive Waste Disposal Compact has been approved by the State legislatures and Governors of Maine, Vermont and Texas. The State of Maine approved the compact through a public referendum.

The compact specifies that the State of Texas will host the disposal facility and the compact provides that no low-level radioactive waste may be exported from or imported to the regional facility except with the approval of the governing commission of the compact.

The compact also states that the commission created to administer the disposal facility shall determine through a site selection process the location of the facility. The compact does not designate a specific site.

The Governors of Vermont, Maine and Texas oppose any amendments to the compact because a revised compact will require the member states to go through a lengthy re-ratification process.

BILL PROVISIONS

Section 1. Short Title.

"This Act may be cited as the 'Texas Low-Level Radioactive Waste Disposal Compact Consent Act'."

Section 2. Finding.

"Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act."

Section 3. Conditions of Consent to Compact.

The consent of Congress to the compact: 1.) shall become effective on the date of enactment of this Act; 2.) is granted subject to the Low-Level Radioactive Waste Policy Act; and, 3.) is granted only for so long as the regional commission established in the compact complies with each provision of the Act.

Section 4. Congressional Review.

This section states that Congress may alter, amend or repeal this Act after expiration of a 10-year period following the date of enactment, and at such intervals thereafter as may be provided in the compact.

Section 5. Texas Low-Level Radioactive Waste Compact.

This section contains the text of the compact.

COST

S. 270 was not reported with a cost estimate, but CBO estimates that enacting H.R. 629, the House bill, would have no effect on the federal budget. (See H.Rept. 105-181, to accompany H.R. 629, which is very similar to S. 270.)

ADMINISTRATION POSITION

No Administration position was available at press time.

POSSIBLE AMENDMENTS

Wellstone. Amend the compact to limit the disposal of low-level waste in Texas to that from Texas, Vermont and Maine.

Wellstone. Amend the compact to address the issue of "environmental justice." The amendment would require the Attorney General to bring a civil action to nullify the compact if he finds that any action by the commission or the member states "... discriminates against any community (through disparate treatment or disparate impact) by reason of the composition of the community in terms of race, color, national origin, or income level." The amendment would also allow citizen suits by members of "...an affected community."

Staff contact: John Peschke, 224-2946